

**REMARKS/ARGUMENTS**

The Applicants' representative has carefully reviewed the Examiner's Office Communication of November 22, 2005, in which the Examiner rejects claims 1-3, 8, 14, 15, and 17-22 under 35 U.S.C. 102(b) as being anticipated by Maust (U.S. Patent No. 6,267,113) and in which the Examiner rejects 4-7, 9-13, 16, and 23-32 as being obvious over Maust in view of various other prior art, including the purported knowledge and ability of a skilled artisan, Hussong (U.S. Patent No. 5,738,084), Wilk (U.S. Patent No. 6,354,831), and Shimek (U.S. Patent No. 5,601,073).

With respect to the Examiner's rejection of claims 1-22 and 32<sup>1</sup>, the Applicants respectfully disagree with the Examiner for the primary reason that Maust does not disclose at least one side panel which is individually removable from a housing to expose a burner. For purposes of this discussion, the Applicants direct the Examiner to Maust, col. 4, lines 39-50. Admittedly, Maust discloses assembly instructions which state that transparent panels 17 are slid downwardly into slots 19, 21 in the corner posts 18. However, the claims at issue generally call for a panel which is *removable*, by sliding or otherwise. Maust simply teaches panels which are *installable* by sliding. There is no teaching or even any suggestion that, once assembled, the transparent panels 17 can be removed. Indeed, it is believed that a person of ordinary skill in the art would understand that the transparent panels 17 are locked into place by means of the support arches which are installed directly above the transparent panels 17. Maust instructs that, after

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<sup>1</sup> The Applicants amendment to claim 32 corrects a typographical error.

sliding the transparent panels 17 into the slots 19, 21, “a tenon end 25 of a support arch 24 is slid into grooves 23 **to lock the arches 24 in place** and columns 18 together, the bottom of grooves 23 supporting the arches 24 above the glass panels 17 in slots 19, 21.” As such, the Applicants believe that the claims as filed are neither anticipated nor rendered obvious by Maust.

Nevertheless, the Applicants hereby amend claim 17 to require that the side panel substantially covers an opening in a side of the house in order to further distinguish the side panel of the present invention from the transparent panel 17 of Maust. As discussed on pages 14-15 of the present application, the side panels of the present invention are adapted to be used in several novel ways. For example, the user can selectively remove panels from the outdoor fireplace to control the exposure of the environment to the flame. Alternatively, the user can selectively remove panels from the outdoor fireplace to distribute heat in the desired directions. Even further, after using the outdoor fireplace, the user can install all of the side panels to protect the burner components from the environment during storage. Even if the transparent panels 17 of Maust were removable, the Applicants believe that the transparent panels could not perform the above mentioned functions. The Applicants direct the Examiner’s attention to Figures 1-3 of Maust; the transparent panels 17 do not completely cover the openings in the sides of the fireplace. Please note the gaps above and below the transparent panel 17 along with the holes in the support arch 24. As such, the burner elements are be exposed to the environment on all sides, even when the transparent panel 17 installed.

With respect to the Examiner's rejection of claims 6, 16, and 30-32, the Applicants respectfully disagree with the Examiner's Official Notice that wheels and handles are old and well known in the art. The transport members of the present invention are far from ordinary in that the claims specify that the transport plane of the transport member is above a baseline of the outdoor fireplace. As such, when the outdoor fireplace is positioned on the ground, the transport members remain off of the ground to prevent inadvertant movement of the fireplace. See page 16 of the present application. The transport plane only contacts the ground when the user raises the handle to a certain height. Consequently, the transport members of the present invention are much safer than ordinary wheels of the prior art.

With respect to the Examiner's rejection of claims 23-29, the Applicant's hereby amend claim 23 such that the claim is dependent upon claim 17.

For the above mentioned reasons, the Applicants believe that the claims are sufficiently distinguished from the prior art and are in condition for allowance. **Applicant believes that no fees are due in connection with this amendment. However, in the event that fees are due, you are hereby authorized to deduct the required amount from our Deposit Account No. 02-0400 (Baker & McKenzie). When identifying such a withdrawal, please use the Attorney Docket Number WEB-961.**

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Respectfully,

A handwritten signature in black ink, reading "David I. Roche". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

David I. Roche  
Reg. No. 30,797